

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR – 751012

Present : Shri D.C.Sahoo, Chairperson
Shri S.K. Jena, Member

Dated the 18th day of July, 2005

Case No.19 of 2005

Pratap Kumar Mohapatra,
Plot No.1962, West Bindusagar Road,
Old Town, Bhubaneswar

... **Petitioner**

- Vrs -

1. Chief Executive Officer & Administrator,
CESCO, IDCO Towers, Bhubaneswar.
2. Shri Srikanta Kumar Paikray, IAS
Ex-CEO & Administrator, CESCO
3. Shri P.R. Patnaik
A.G.M. (Elect.), CESCO
BED, Rasulgarh, Bhubaneswar

... **Respondents**

For the petitioner - Mr. Nirmal Pattnaik, Advocate

ORDER

A petition has been filed on 05.05.2005 praying for an enquiry into the affairs of and alleged malpractices in Bhubaneswar Electrical Division of CESCO's Undertaking and for fixing of responsibility for alleged losses and for recovery of such alleged losses personally from Shri Srikant Kumar Paikaray, IAS (who ceased to be the CEO with effect from 20th April, 2005) and from Shri P.R. Pattnaik, the Asst. General Manager (Electrical), BED at the relevant period.

The petitioner in his Petition has made some specific allegations supported by news stories published in the Samay, the Dharitri and the Sambad

on 22.03.2005 & 13.04.2005, 22.03.2005 and 21.03.2004 respectively against Respondent No.3, alleging certain acts of mismanagement causing wrongful loss to CESCO under the management of Respondent No.2. The allegation against Respondent No.2 is one of connivance, though particulars thereof have not been furnished. These allegations clearly pertain to alleged malfeasance and mismanagement of a particular subordinate officer in a particular area of his operation.

The petition does not mention the specific provision of the Electricity Act, 2003 under which the jurisdiction of the Commission has been invoked. During hearing on the question of admission, counsel for the Petitioner submitted that he sought to invoke the jurisdiction under Sec. 128 of the Electricity Act, 2003.

Besides it was also brought to our notice that as CESCO's undertaking is managed by an Administrator appointed by the Commission under the relevant provisions of Electricity Act, 2003 the Commission should enquire into these allegations.

In this background the relevant provision of Sec.128 of the Electricity Act, 2003 may be read:-

“128. Investigation of certain matters – (1) The Appropriate Commission may, on being satisfied that a licensee has failed to comply with any of the conditions of licensee or a generating company or a licensee has failed to comply with any of the provisions of this Act or the rules and regulations made there under, at any time, by order in writing, direct any person (hereinafter in this section referred to as “Investigating Authority”) specified in the order to investigate the affairs of any generating company or licensee to report to the Commission on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting him in any investigation under this section.” (Italics supplied for emphasis)”

It is to be seen whether the jurisdiction is available to cases of mismanagement, malfeasance or corruption on the part of individual officers in

some particular area of his operations or the jurisdiction is confined only to non-compliance by a licensee with any condition of his licence or with any of the provisions of the Electricity Act, 2003 and rules and regulations made thereunder.

The plain words of Sec.128 of the Electricity Act, 2003 reveal that the regulatory power of the Commission thereunder is concerned only with violation of licence conditions or provisions of the said Act and rules and regulations applicable to the licensee. Individual acts of omission and commissions have to be dealt by the higher management of the licensee to deal with the matter in the manner it considers appropriate taking into consideration the provisions of Discipline and Control Rules applicable to the employees of the licensee. We direct CEO, CESCO to enquire into the allegation raised and take action as deemed appropriate.

The Commission, for reasons aforesaid, holds that it is not a fit case for admission and the petition is dismissed.

(S. K. Jena)
Member

(D.C. Sahoo)
Chairperson